

****E-Filed 4/13/09****

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONG AH TIRE & RUBBER CO., LTD.,
a Korean corporation,

No. 5:06 CV 3359 JF (RS)

Plaintiff,

v.

ORDER DENYING MOTION TO
FILE DOCUMENTS UNDER SEAL

GLASFORMS, INC., et al., a California
corporation,

Defendant/Third-Party
Plaintiff,

v.

CTG INTERNATIONAL (NORTH
AMERICA) INC., an Indiana corporation;
TAISHAN FIBERGLASS, INC.,
a corporation organized under the laws of
the People's Republic of China,

Third-Party Defendants.

THIS MATTER is before the Court on an administrative motion filed by Glasforms, Inc. ("Glasforms") to file certain documents under seal. Glasforms, Inc.'s Administrative Motion to File Documents Under Seal, filed February 27, 2009. The documents in question are (1) Exhibits A and B to the Declaration of Noelle R. Dunn in Support of Glasforms's Supplemental Brief in Support of Motion for Sanctions Due to Spoliation of Evidence, and (2) those portions of the Supplemental Brief which quote and/or reference these two exhibits.

1 Exhibits A and B are portions of deposition transcripts from Taishan Fiberglass, Inc.'s
2 employee Guo Zhang. During the course of his deposition, Mr. Zhang designated portions of his
3 testimony as "Highly Confidential – Attorney's Eyes Only" and "Confidential," pursuant to the
4 protective order previously entered by the undersigned. *See* Stipulation and Protective Order, filed
5 January 16, 2007, at 2 (defining "Highly Confidential – Attorney's Eyes Only" and "Confidential").

6 Glasforms filed its Supplemental Brief in Support of Motion for Sanctions Due to Spoliation
7 of Evidence on February 27, 2009, accompanied by the instant motion to seal. Since that date, no
8 other party has responded to the motion to seal, either affirmatively or in opposition.

9 The Ninth Circuit has explained the general standard for motions to seal, such as this one, as
10 follows: "[A] 'compelling reasons' standard applies to most [motions to seal] judicial records. . . .
11 Under the 'compelling reasons' standard, a district court must weigh relevant factors, base its
12 decision on a compelling reason, and articulate the factual basis for its ruling . . . without relying on
13 hypothesis or conjecture." *Pintos v. Pac. Creditors Ass'n*, 504 F.3d 792, 801-02 (9th Cir. 2007)
14 (internal citation and quotation marks omitted) (second alteration original). "Relevant factors"
15 include the "public interest in understanding the judicial process and whether disclosure of the
16 material could result in improper use of the material for scandalous or libelous purposes or
17 infringement upon trade secrets." *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.1995)
18 (internal quotation marks omitted). The Ninth Circuit went on to state unequivocally: "An order
19 that fails to articulate its reasoning must be vacated and remanded because [m]eaningful appellate
20 review is impossible when the appellate panel has no way of knowing whether relevant factors were
21 considered and given appropriate weight." *Pintos*, 504 F.3d at 802 (internal quotation marks
22 omitted) (alteration original).

23 In this case, the only argument before the Court regarding the "relevant factors" analysis is
24 Glasforms's statement that its attorneys were informed that Mr. Zhang designated his testimony as
25 confidential "because it contains confidential, proprietary and commercially sensitive information."
26 Declaration of Noelle R. Dunn in Support of Glasforms, Inc.'s Administrative Motion to File
27 Documents Under Seal, filed February 27, 2009, at 2; *see also* Motion to File Documents Under
28 Seal, *supra*, at 2 (making a similar representation). This vague statement does not enable the
undersigned to assess in a serious way the documents' impact on the "public interest in

1 understanding the judicial process," nor their potential for "improper use . . . for scandalous or
2 libelous purposes or infringement upon trade secrets." *Hagestad*, 49 F.3d at 1434.

3 As no party — including Taishan Fiberglass, Inc., the party whose employee seeks to protect
4 his testimony — has provided the Court with any meaningful argument as to why the motion to seal
5 should be granted, the case for sealing Exhibits A and B is unpersuasive. *See Kamakana v. City and*
6 *County of Honolulu*, 447 F.3d 1172, 1181 (2006) (denying a motion to seal, and noting that the party
7 advocating for secrecy had a chance to show "compelling reasons" but "squandered it").

8 Accordingly, Glasforms's motion is denied. Glasforms shall have three business days from
9 the filing of this order in which to file an unsealed, unredacted version of its supplemental brief and
10 accompanying documents.

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12 IT IS SO ORDERED.

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14 Dated: 4/13/09

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16 RICHARD SEEBORG
17 United States Magistrate Judge
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